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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID GEORGE GALLEGOS,

Defendant and Appellant.

E065095

(Super.Ct.No. FBA006620)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond L. Haight, III, Judge. Affirmed.

Julie Sullwold, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne G. McGinnis, and Kristen Hernandez, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION¹

Defendant David George Gallegos appeals an order denying a petition to have his felony conviction designated a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act. (§§ 487, subd. (a); 1170.18.) The trial court denied defendant's petition on the ground defendant was ineligible for resentencing because the value of the stolen property exceeded \$950.

Defendant argues that substantial evidence does not support the trial court's finding about the value of the property. We conclude defendant did not meet his burden of showing the value of the stolen property did not exceed \$950. We therefore affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

In 2001, when defendant was 18 years old, he and five codefendants were charged with two counts of first degree residential burglary and one count of receiving stolen property. (§§ 459, 496, subd. (a).) Defendant pleaded nolo contendere to one count of receiving stolen property. The trial court dismissed the other counts and granted defendant probation. After defendant violated probation, the trial court sentenced him to the low term of one year four months.

¹ All statutory references are to the Penal Code.

In 2015, defendant filed a petition for reduction pursuant to section 1170.18, subdivision (f). Defendant submitted no evidence about the value of the stolen property. The prosecution opposed the petition, asserting the value of the stolen property exceeded \$950. The trial court denied defendant's petition on the grounds the value of the stolen property exceeded \$950. There is no reporter's transcript of the hearing on the petition.

The only information in the record about the value of the stolen property is in the felony complaint. It alleges that defendant and the five codefendants bought, received, concealed, sold, or withheld "speakers, cameras, drums, computers, stereos, jewelry, video games, Nintendo 64 and a skateboard."²

III

DISCUSSION

In November 2014, California voters enacted Proposition 47, which created a new resentencing provision: section 1170.18. The statute provides that those who have already served their sentence may petition for reduction to a misdemeanor. (§ 1170.18, subds. (f)-(h).) Under section 1170.18, subdivision (f): "A person who has completed his or her sentence for a conviction . . . who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors."

² The court ordered two \$200 restitution fines. (§§ 1202.4, 1202.45.)

Proposition 47 reduced the offense of receiving stolen property from a felony to a misdemeanor where the value of the property does not exceed \$950. (§ 496, subd. (a).) Such an offense is now a misdemeanor.

A defendant must establish eligibility by “stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citation.] The defendant must attach information or evidence necessary to enable the court to determine eligibility.” (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137 [Fourth Dist., Div. Two] (*Perkins*), citing *People v. Sherow* (2015) 239 Cal.App.4th 875, 880 (*Sherow*).) The petitioner has the burden of establishing eligibility for resentencing “[b]ecause defendant is the petitioner seeking relief, and because Proposition 47 does not provide otherwise.” (*Perkins*, at p. 136, citing *Sherow*, at pp. 878-879; see *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450 (*Rivas-Colon*).) Although defendant urges us to reject this line of cases, we decline to do so.

Defendant did not meet his burden of establishing in the trial court that the value of the stolen property did not exceed \$950. The felony complaint did not allege the value of any of the stolen property. Defendant did not attach any information or evidence to his petition, enabling the court to determine eligibility. At the time of the hearing on reduction, no evidence showed that the value of the stolen property did not exceed \$950. Nothing in the record establishes that the stolen property did not exceed \$950. In other

words, insufficient evidence, or no evidence whatsoever, supported defendant's petition for reduction.

Instead, defendant argues the burden is on the People to prove the value of the stolen property exceeds \$950 but, as *Sherow* holds, the burden is on defendant to prove the stolen property does not exceed \$950. (*Sherow, supra*, 239 Cal.App.4th at pp. 878-880; see *Rivas-Colon, supra*, 241 Cal.App.4th at p. 449.) Defendant failed to meet this burden. Accordingly, since defendant failed to present the trial court with any evidence establishing that the stolen property did not exceed \$950, we affirm the trial court's ruling denying defendant's petition. (*Rivas-Colon, supra*, 241 Cal.App.4th at pp. 449-450.) Defendant simply did not meet his burden of proof in the trial court.

IV

DISPOSITION

The order denying defendant's petition for reduction is affirmed without prejudice to refiling.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

HOLLENHORST

J.